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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JAMES GARDIN,

11 Plaintiff,

12 v.

13 OFFICER MAHN,

14 Defendant.
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CASE NO. C09-5116RJB

ORDER

16 This matter is before the court on plaintiff's response to the court's previous order (Doc.
17 10) and plaintiff's motion for appointment of counsel (Doc. 9). Having reviewed these motions
18 and the balance of the record, the undersigned does hereby find and ORDER as follows.

19 In response to the court's order directing plaintiff to show cause why the matter should
20 not be dismissed for lack for prosecution, plaintiff states that he is unfamiliar with the law. Doc.
21 10. Plaintiff also appears to claim that defendant has not complied with Rule 12 of the Civil
22 Rules of Federal Procedure by not answering the complaint and asks that this matter not be
23 dismissed. *Id.* By separate pleading, plaintiff has asked that he be appointed counsel. Doc. 9.

24 Although the court can request counsel to represent a party, 28 U.S.C. § 1915(e) (1), the
25 court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331
26 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616

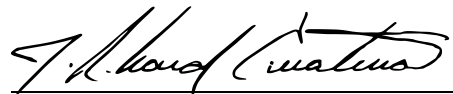
1 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both
2 the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro*
3 *se* in light of the complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

4 It is nearly impossible to determine the likelihood of success on the merits in this matter
5 because plaintiff has not addressed this issue in his motion and an answer or other response to
6 the complaint has not been filed. On its face, the complaint appears to have some merit and thus,
7 the court directed service. At this juncture, plaintiff's motion for appointment (Doc. 9) is
8 **DENIED**, without prejudice. Accordingly, plaintiff may raise the request at a later point in the
9 litigation if necessary.

11 Liberally construing plaintiff's response to the court's order to show cause, the court
12 finds plaintiff has adequately set forth a request for the court to direct defendant to file an answer
13 or other appropriate pleading in response to the summons and Complaint. **Accordingly,**
14 **defendant shall respond appropriately to the summons and claims made in the Complaint,**
15 **by no later than November 24, 2009, otherwise default may be entered in this matter.**

17 The Clerk is directed to send a copy of this order to plaintiff and defendant's counsel.

18 DATED this 4th day of November, 2009.

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22 J. Richard Creatura
23 United States Magistrate Judge
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